



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant : David J. Luneau et al. Art Unit : 2614
Serial No. : 10/038,866 Examiner : Gerald Gauthier
Filed : January 4, 2002 Conf. No. : 6385
Title : TELEPHONE NETWORK MESSAGING

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

Applicants submit this appeal brief pursuant to 37 C.F.R. § 41.37.

(1) Real Party in Interest

The present application is assigned to ClassCo Inc.

(2) Related Appeals and Interferences

Application Serial No. 10/336,562 claims priority under 35 U.S.C. § 120 from the present application. A Notice Of Appeal was filed for this application on October 11, 2007, and an Appeal Brief is being filed concurrently herewith, and so no decisions have been rendered in this appeal.

(3) Status of Claims

Claims 1-22 are pending in this application.

Claims 1-22 stand finally rejected.

Claims 1-22 are being appealed.

CERTIFICATE OF MAILING BY FIRST CLASS MAIL

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(4) Status of Amendments

No amendments were filed subsequent to final rejection.

(5) Summary of Claimed Subject Matter

Claim 1 the only independent claim involved in the appeal.

Claim 1 is directed to a method for communicating data using the caller-identification feature of a telephone network. The caller-identification feature allows data to be communicated using, for example, a common channel interoffice signaling system called SS7, as well as advanced equipment at the telephone central office that can send data signals to end-user Customer Premises Equipment ("CPE"). (1:9-13) As a matter of nomenclature, the party placing the call is the "calling party," and the party receiving the call is the "called party." Using the caller-identification feature data, such as the telephone number of the calling party can be communicated to the called party's CPE.

The method of claim 1 involves identifying a message recipient, by telephone number, on the telephone network, and also selecting a message for the message recipient. A message code in the format of a telephone number is provided that corresponds to the selected message. An illustration of this is discussed at 9:4-14:

Specifically, a block of, e.g., 100 telephone numbers is reserved for use as message codes. Each number serves as a message code corresponding to a specific message. For instance, in the emergency notification context, one number could correspond to a tornado warning (e.g., (555) 555-0001), and a different number could correspond to a hurricane warning (e.g., (555) 555-0002). A different number could correspond to a wake up message (e.g., (555) 555-0003).

To send a message, one or more message recipients, each of whom has a telephone number on the network, is first identified. For instance, if a hurricane warning is to be sent to everyone in the Florida Keys, the telephone numbers of each household in that region are identified. Then the system determines the telephone number message code corresponding to a hurricane warning, e.g., (555) 555-0002.

A non-associated telephone call is then set up to the recipient telephone number from a simulated calling party having the same telephone number as the message code. The Applicants have expressly defined the term "non-associated telephone call" in the specification (3:25-4:2):

The term "non-associated telephone call" means a simulated telephone call from a simulated calling party (having the same telephone number as the message code) to the real recipient telephone number. In the non-associated telephone call, the caller-identification information for the simulated calling party is communicated (e.g., using SS7) to the recipient telephone number, but no actual call is provisioned.

To reiterate, a "non-associated telephone call" is a *simulated* call from a *simulated* calling party, *where no actual call is provisioned*. It is advantageous to employ a non-associated telephone call, in which no actual call is provisioned, because doing so consumes far less bandwidth than an actual call (4:3-11):

This aspect of the invention allows for data communication using the caller-identification feature. Because data is communicated by setting up a non-associated telephone call that does not require provisioning an actual call, this method consumes little or no call bandwidth on the telephone network. For instance, in the North American telephone network, ICLID data is communicated on SS7, a portion of the network that is not presently used to transmit any voice traffic. This technique is particularly advantageous in that it puts minimal resource demands on the circuit-switched telephone network, and does not require expensive deployments of servers to each Central Office served.

In continuing the above illustration, the specification reiterates the advantage of putting minimal resource demands on the telephone network by virtue of using only a non-associated telephone call, i.e., a simulated call from a simulated calling party dialing from a telephone number that is identical to the message code (9:14-27):

For each of the identified recipient telephone numbers, the server sets up a non-associated telephone call. The ICLID signal for this non-associated telephone call includes data corresponding to the telephone number/message code corresponding to a hurricane warning, e.g., (555) 555-0002. This signal is received by each recipient, in the same manner as caller ID information. However, there is no actual call being placed from this telephone number, and thus no line is provisioned. If the recipient were to "answer" the call, no actual end-to-end telephone circuit would be established, and no call completion would take place. Thus, the non-associated call is a simulated call from a simulated calling party dialing from a telephone number that is identical to the message code. Only the called party (the message recipient) is real. This technique is particularly advantageous in that it puts minimal resource demands on the circuit-switched telephone network, and does not require expensive deployments of servers to each Central Office served. One server 6 can be located anywhere on the SS7 network.

The telephone network uses the caller-identification feature to communicate data corresponding to the message code to the recipient telephone number, and the data corresponding to the message code is received at the recipient telephone number. As the specification further explains (9:27-10:8):

The receiving equipment 10 is preprogrammed to recognize all of the e.g., 100, telephone number/message codes. When it does, rather than display the message code as a fictional incoming call telephone number, the equipment 10 refers to a local database to convert the information into a more usable form. For instance, rather than displaying the hurricane warning code, e.g., (555) 555-0002, as an incoming telephone call, the equipment could display the text "Hurricane Warning," and audibly announce that warning as well. Particular message codes could also trigger warning alarms. The same approach could be used with a single recipient to provide personalize wake-up call service, by sending the appropriate wake-up call message code/telephone number (e.g., (555) 555-0003).

(6) Grounds of Rejection to be Reviewed on Appeal

The rejection under 35 U.S.C. § 103(a) of Claims 1-19 as obvious over Albal, U.S. Patent Application No. 2003/0147518 A1, in view of Meldrum, United States Patent No. 6,697,478.

The rejection under 35 U.S.C. § 103(a) of Claims 20-22 as obvious over Albal, Meldrum, and Tate, U.S. Patent No. 6,509,833.

(7) Argument

Applicants will argue the patentability of Claims 1-22 as a group.

Applicants respectfully submit that the final rejection of the present application was based on the improper application of claim construction standards as required by both the relevant caselaw, and the MPEP. The issue centers on the claim term "non-associated telephone call." As noted above, Applicants have chosen to be their own lexicographers with regard to this term, by expressly defining it in the specification as a *simulated* call from a *simulated* calling party, *where no actual call is provisioned* (3:25-4:2):

The term "non-associated telephone call" means a simulated telephone call from a simulated calling party (having the same telephone number as the message code) to the real recipient telephone number. In the non-associated telephone call, the caller-

identification information for the simulated calling party is communicated (e.g., using SS7) to the recipient telephone number, but no actual call is provisioned.

The law clearly permits Applicants to be their own lexicographers, and to define terms as choose. MPEP § 2111.01(IV) clearly states that Applicants' construction must be used to examine claims for patentability:

IV. < APPLICANT MAY BE OWN LEXICOGRAPHER

An applicant is entitled to be his or her own lexicographer and may rebut the presumption that claim terms are to be given their ordinary and customary meaning by clearly setting forth a definition of the term that is different from its ordinary and customary meaning(s). See *In re Paulsen*, 30 F.3d 1475, 1480, 31 USPQ2d 1671, 1674 (Fed. Cir. 1994) (inventor may define specific terms used to describe invention, but must do so "with reasonable clarity, deliberateness, and precision" and, if done, must "'set out his uncommon definition in some manner within the patent disclosure' so as to give one of ordinary skill in the art notice of the change" in meaning) (quoting *Intellicall, Inc. v. Phonometrics, Inc.*, 952 F.2d 1384, 1387-88, 21 USPQ2d 1383, 1386 (Fed. Cir. 1992)). Where an explicit definition is provided by the applicant for a term, that definition will control interpretation of the term as it is used in the claim. *Toro Co. v. White Consolidated Industries Inc.*, 199 F.3d 1295, 1301, 53 USPQ2d 1065, 1069 (Fed. Cir. 1999) (meaning of words used in a claim is not construed in a "lexicographic vacuum, but in the context of the specification and drawings"). Any special meaning assigned to a term "must be sufficiently clear in the specification that any departure from common usage would be so understood by a person of experience in the field of the invention." *Multiform Desiccants Inc. v. Medzam Ltd.*, 133 F.3d 1473, 1477, 45 USPQ2d 1429, 1432 (Fed. Cir. 1998). See also *Process Control Corp. v. HydReclaim Corp.*, 190 F.3d 1350, 1357, 52 USPQ2d 1029, 1033 (Fed. Cir. 1999) and MPEP § 2173.05(a). The specification should also be relied on for more than just explicit lexicography or clear disavowal of claim scope to determine the meaning of a claim term when applicant acts as his or her own lexicographer; the meaning of a particular claim term may be defined by implication, that is, according to the usage of the term in >the< context in the specification. See *Phillips v. AWH Corp.*, *415 F.3d 1303<, 75 USPQ2d 1321 (Fed. Cir. 2005) (en banc); and *Vitronics Corp. v. Conceptron Inc.*, 90 F.3d 1576, 1583, 39 USPQ2d 1573, 1577 (Fed. Cir. 1996). Compare *Merck & Co., Inc. v. Teva Pharms. USA, Inc.*, 395 F.3d 1364, 1370, 73 USPQ2d 1641, 1646 (Fed. Cir. 2005), where the court held that patentee failed to redefine the ordinary meaning of "about" to mean "exactly" in clear enough terms to justify the counterintuitive definition of "about." ("When a patentee acts as his own lexicographer in redefining the meaning of particular claim terms away from their ordinary meaning, he must clearly express that intent in the written description.").

In issuing the final rejection, the Examiner did not use the Applicants' express definition of a "non-associated telephone call" as a simulated call from a simulated calling party, where no actual call is provisioned. Rather, the Examiner adopted a different construction for this term, namely "a signal to the recipient equipment." (Office Action Dated June 27, 2007, at 8.) The Final Rejection depended entirely on this incorrect, and overbroad, construction.

The Examiner did not purport to find the claim feature of a "non-associated telephone call" in the primary reference, Albal. In this context, the Examiner appeared to apply Applicants' express definition of the term: "Albal disclose placing a call to the subscriber but fails to disclose setting up a non-associated telephone call to the recipient telephone number from a simulated calling party having the same telephone number as the message code." (*Id.* at 4.)

The Examiner instead purported to find this feature at 3:41-55 of the Meldrum reference. In particular, the Examiner identifies that "[t]he call manager sends a SS7 signal to the customer equipment." (*Id.* at 4.)

However, Meldrum's use of the SS7 signal occurs in connection with an *actual* call, not a *simulated* call. This is clear from the outset of the patent, which explains the problem to which Meldrum is directed, namely, the difficulty that an actual caller (not a simulated caller) can have in reaching someone who has multiple telephone numbers (1:13-22):

Trends such as telecommuting, virtual offices, contract employment, etc. have led to the proliferation of both land-based and cellular phone services. It is not uncommon for a person to have different telephone numbers at their corporate office, their home office, their home, and one or more cell phone numbers. Callers are therefore often required to dial multiple numbers in order to reach a person. This is not only a waste of time, but expensive. A number of prior "simultaneous ring" systems have been proposed.

Meldrum discloses a simultaneous ring system that couples an actual incoming call (not a simulated call) to any one of several telephone numbers (1:65-2:5):

In response to receiving an incoming call on the user-line, the simultaneous ring system simultaneously rings target phone numbers associated with the telephone number and then transfers the telephone call to the telephone network if a connection to one of the target phone numbers is made.

With regard to the passage cited by the examiner, it is likewise clear that the passing of the SS7 signal to the call manager 54 occurs in connection with an actual call, not a simulated call. As explained at 3:49-52, Meldrum discloses that the call manager 54 then determines if this incoming call is to a telephone number that belongs to a "valid subscriber." At 3:52-53, Meldrum explains that the call manager 54 then queries a database to look up "target telephone numbers" based on this dialed number of the incoming call, and then (3:54-56) initiating SS7 calls on the outbound channels for each of the target telephone numbers.

Although the details of this process are not precisely disclosed in this passage, apparently the call manager 54 uses the part of the SS7 signal containing the *called* party's telephone number—not the part of the SS7 signal containing the actual *calling* party's telephone number—to identify a series of "target telephone numbers" to be rung simultaneously. Thus, not only is Meldrum directed to *actual* (not *simulated*) calls, but this passage does not disclose the use of the actual calling party's telephone number (the caller-identification feature) for any purpose.

Accordingly, there is no disclosure in the cited passage of Meldrum of setting up of a non-associated telephone call. That term has been expressly defined in the specification as pertaining to the situation where *no actual call is provisioned*. The simultaneous ring process disclosed in the cited passage of Meldrum is disclosed as being performed in connection with an actual call, and so does not supply the teaching that is missing also from Albal.

In issuing the final rejection, the Examiner appears to agree that Meldrum does not disclose a simulated call. The Examiner states: "Meldrum discloses an SS7 signal to the customer equipment in column 3. The original claim 1 contains a non-associated telephone call to the recipient telephone number but not a simulated call as argued. The examiner interprets the non-associated telephone call as a signal to the recipient equipment." (Office Action Dated June 27, 2007, at 8.) As noted above, this rejection is not based on the Applicants' claim construction, but rather a much broader construction that would have a "non-associated telephone call" cover any signals sent to the recipient equipment, including (as in the case of Meldrum) signals from actual calling parties, rather than simulated calling parties (as expressly required by Applicants' lexicography).

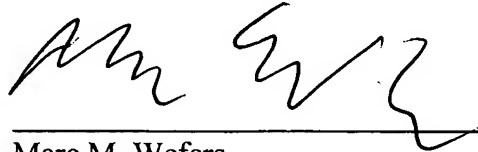
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Applicants therefore submit that all claims are in condition for allowance, which action is requested.

Please apply any charges, or make any credits, to deposit account 06-1050, reference 10200-010001.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'M. Wefers', is written over a horizontal line.

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Appendix of Claims

1. A data communication method for use in a telephone network having a caller-identification feature, wherein the caller-identification feature communicates data to a called party that includes data corresponding to a telephone number of a calling party, the method comprising:

identifying a message recipient having a message recipient telephone number on the telephone network;

selecting a message for the message recipient;

providing a message code corresponding to the selected message, wherein the message code is in the format of a telephone number;

setting up a non-associated telephone call to the recipient telephone number from a simulated calling party having the same telephone number as the message code, such that the telephone network uses the caller-identification feature to communicate data corresponding to the message code to the recipient telephone number;

receiving the data corresponding to the message code at the recipient telephone number.

2. The method of claim 1 further comprising the step of converting the received data corresponding to the message code.

3. The method of claim 2 wherein the received data corresponding to the message code is converted to the message for the message recipient.

4. The method of claim 3 further comprising the step of displaying the message as text.

5. The method of claim 3 further comprising the step of audibly announcing the message.
6. The method of claim 5 wherein the message is audibly announced over a speaker other than a speaker in a telephone handset.
7. The method of claim 5 wherein the message is audibly announced over a speaker in a telephone handset.
8. The method of claim 7 wherein the telephone handset is corded.
9. The method of claim 7 wherein the telephone handset is cordless.
10. The method of claim 1 wherein the telephone network is the North American telephone network.
11. The method of claim 10 wherein the caller-identification feature is Caller ID.
12. The method of claim 11 wherein the data communicated to a called party by the Caller ID feature is the Incoming Caller Line Identification (ICLID) signal.
13. The method of claim 10 wherein the format of the telephone number includes a three-digit area code and a seven-digit number.
14. The method of claim 10 wherein the message code is a ten-digit number.
15. The method of claim 1 wherein the caller-identification feature communicates data on a common channel interoffice signaling system.

16. The method of claim 15 wherein the caller-identification feature communicates data on the signaling system 7 (SS7) common channel interoffice signaling system.

17. The method of claim 1 further comprising the step of identifying plural message recipients, each having a respective message recipient telephone number.

18. The method of claim 17 wherein the recipients are identified on the basis of geographical location.

19. The method of claim 17 wherein the same message is selected for each of the plural recipients.

20. The method of claim 19 wherein the message is an emergency notification message.

21. The method of claim 1 further comprising the step of causing a telephone associated with the message recipient telephone number to provide a distinctive ring when data corresponding to a message code is received at the recipient telephone number.

22. The method of claim 1 wherein the message is an emergency notification message.

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Evidence Appendix

None. Applicants are not relying on any evidence submitted pursuant to §§ 1.130, 1.131, or 1.132, or of any other evidence entered by the Examiner.

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Related Proceedings Appendix

None. There are no decisions rendered by a court or the Board in any proceeding identified pursuant to section (ii) above.